

### **REMARKS**

Favorable reconsideration and allowance of this application are requested.

Claims 1-2, 4-6 and 12 as presented with the applicant's amendment dated November 7, 2007 remain pending herein for consideration.

#### **1. Response to "New Matter" Objection/Rejection**

The Examiner persists in his objections/rejections based on 35 USC §132(a) and 35 USC §112, first paragraph due to the alleged "new matter" presented by the use of the generic chemical names corresponding to the TRITON™ and TERGITOL™ surfactants (i.e., octylphenol ethoxylate and nonylphenol ethoxylate, respectively).

In essence, the Examiner asserts that the evidence that was previously provided does not establish that such trade names had the same chemical names as applicants are asserting. The Examiner's rationale is quite flawed in this respect as the copyright notices for the product data sheets submitted to the Examiner showed a date of 1995, which is of course well prior to the effective date of the present application.

In any event, several prior issued US patents provide supplemental evidence supportive of the applicant's position, namely USP 5,804,633 (see column 2, lines 48-50) which issued September 8, 1998 and USP 5,273,777 (see column 4, lines 28-29 and 66-67) which issued December 28, 1993.<sup>1</sup>

Thus, in view of the evidence of record, applicants suggest that the prior amendments do not raise the specter of "new matter" under 35 USC §132(a). Continued objection on this basis would therefore amount to reversible error. Withdrawal of the same is therefore in order.

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<sup>1</sup> A form listing these evidentiary US patents is attached. In addition, the fee set by Rule 17(p) is also attached to ensure consideration of the same.

## 2. Response to 35 USC §103(a) Rejection

The only remaining issue to be resolved in this application is the Examiner's continued rejection of the claims based on prior publications of record. In this regard, the Examiner now combines USP 4,710,388 to Liu et al with Scott et al and Nisperos Carriedo et al to reject the claims under 35 USC §103(a).

In essence, the Examiner asserts that an ordinarily skilled person would have considered it obvious to substitute the TRITON™ surfactant disclosed in the formulations of Liu et al as a surfactant in combination with PVC compositions of Scott et al since Nisperos Carriedo et al discloses a polysorbate that may be employed and since Liu et al disclose that ethoxylated phenols and polysorbates are equivalent. Applicant suggests that the rejection that has now been advanced is at best quite strained. As such, the rejection advanced by the Examiner is inappropriate under 35 USC §103(a) and must be withdrawn.

Specifically, it seems that the Examiner has lost focus of the fact that the ethoxylated phenols and polysorbates are *nonionic* surfactants. This evidence was provided with the applicant's prior amendment dated January 23, 2007. Scott et al on the other hand explicitly disclose that "...best results are obtained using surface active materials of the *anionic* classification." (column 2, lines 43-45, emphasis added). Thus, directly contrary to Scott et al, the present applicant has discovered that superior results ensue when octylphenol ethoxylate and nonylphenol ethoxylate surfactants – each of which is a *nonionic* surfactant – are employed in combination with PVC.

That octylphenol ethoxylates and nonylphenol ethoxylates are known generally by Liu et al is therefore not the issue. Indeed, Liu et al does not employ such *nonionic* surfactants in combination with PVC, which as noted above is not surprising since Scott et al teach that *anionic* surfactants are critically required in order to achieve satisfactory results in combination with PVC.

PETCAVICH, ROBERT J.  
Serial No. 10/633,207  
July 23, 2008

Likewise the fact that polysorbates are disclosed in Nisperos Carriedo et al for use in compositions that do *not* include PVC is also quite illustrative of the *non-obviousness* of the present invention since polysorbates again are *non-ionic* surfactants. Hence, an ordinarily skilled person would not consider non-ionic polysorbates of Nisperos Carriedo et al in the first instance as replacements for the critically required *anionic* surfactants of Scott et al and then extrapolate to the TRITON™ surfactants disclosed in Liu et al. As such, the combination of references cannot render obvious the presently claimed invention under 35 USC §103(a).

Withdrawal of all rejections advanced under 35 USC §103(a) is therefore in order.

### 3. Fee Authorization

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140.

Respectfully submitted,

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